IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 161 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARSANGBHAI NANUBHAI GHELDA

Versus

STATE OF GUJARAT

Appearance:

MS MITA PANCHAL FOR MR SHAKTISINH GOHIL for Petitioner

MR SJ DAVE, learned APP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/04/2002

ORAL JUDGEMENT

1. By this petition, the petitioner has challenged the legality, validity and propriety of the order dated 5.1.2002 passed by the Deputy Secretary, Home Department rejecting the appeal filed by the present petitioner

challenging the order dated 20.10.2001 passed by the Sub-Divisional Magistrate, Bhavnagar under Section 56 of the Bombay Police Act, 1951 whereby the present petitioner has been externed from Districts of Bhavnagar, Rajkot, Amreli, Junagadh, Surendranagar and Ahmedabad on the ground that the order, which has been passed by the Sub-Divisional Magistrate, Bhavnagar and confirmed by the appellate authority is erroneous, arbitrary, unconstitutional and malafide of the principles of natural justice and against the Articles 14 and 21 of the Constitution of India.

2. I have heard Ms.Mita Panchal, learned advocate for Mr. Shaktisingh Gohil, learned advocate for the petitioner and Mr.S.J.Dave, learned APP for the respondent - State.

3. Ms.Panchal has mainly argued that the present petitioner is a leading social worker and doing agricultural work for his livelihood and was also President of Vallabhipur Taluka Panchayat during 1986-87 and from 24.2.1987 to 31.10.1993. The petitioner was also elected as a member of Vallabhipur Taluka Panchayat for the period from 1995 to 2000. He was also a member of the District Panchayat, Road and Building Committee for the year 1987-1989. In past also, he was elected as a member of the Vallabhipur Nagar Panchayat for the period from 1970 to 1987 and also a Vice President of the Vallabhipur Marketing Yard. He was elected as a member of the Vallabhipur Land Development Bank and also acted as Honorary Secretary of the Red Cross Society. It is the say of the petitioner that the petitioner was in the Congress Party. It is further the say of the petitioner that earlier the petitioner had worked against the present M.L.A. for two years and in the last Assembly Election also and, therefore, the present proceedings have been initiated and he has been externed from the above referred districts. Ms.Panchal has also argued that the Sub-Divisional Magistrate, Bhavnagar had issued a show cause notice to the petitioner which is at Annexure-C, Page-33. She has also taken me through page-35 and argued that the authority has registered three Criminal Cases against the present petitioner in Vallabhipur Police Station. Out of three, a case registered at Sr.No.2 i.e. Vallabhipur Police Station C.R.No.ii-28/99 is of Prevention of Gambling Act and, therefore, it does not fall under Chapter XII, XVI and XVII of the Criminal Procedure Code then also validity has been stated in the show cause notice and continued the same in the order. She has argued that it is totally non-application of mind, and no reasons has been assigned

either in the show cause notice or in the order externing the present petitioner from he neighbouring districts. She has relied upon the judgment in the case of Mustufamiya Pirsahedmiya Saiyed v/s. State of Gujarat & anr., reported in 1999 (1) GLH 913 more particularly head note-B, paras-7 and 8. She has taken me through the show cause notice, the impugned order passed by the Sub-Divisional Magistrate, Bhavnagar and also the order passed by the appellate authority by the authority.

4. Whereas the learned APP has mainly argued that reasons have been assigned by the authority in the order of externment externing the present petitioner from neighbouring districts, whereas the learned APP also has argued in support of the order passed by the authority and confirmed by the appellate authority.

5. I have gone through the show cause notice, the order of externment passed by the Sub-Divisional Magistrate, Bhavnagar and confirmed by the appellate authority and also the judgment which, the learned counsel for the petitioner has relied upon, more particularly in para-7 which reads as under :-

" Another instance of non-application of mind while issuing show-cause notice is exhibited from the fact that out of the remaining two offences mentioned in the grounds of detention, only one offence can be said to be punishable under Chapter XVI or XII of the Indian Penal Code. Offence at Serial No.3 is neither punishable under Chapter XVI nor under Chapter XVII of the Indian Penal Code. If the offence at serial No.3 is not punishable under these two chapters, its recital in the show-cause notice will again expose non-application of mind by the externing authority. Then remains only one offence mentioned at Serial No.2 which was committed in the year 1993. It was argued by the learned counsel for the petitioner that so far only investigation is going on in this offence and neither charge-sheet has been submitted nor trial is pending. Thus, this offence and neither charge-sheet has been submitted nor trial is pending. Thus, this offence has become stale and after about 5 years, the show-cause notice on the basis of this offence could not have been issued which also exposes non-application of mind. Externment orders are passed considering the

imminent requirement that the externee should be externed so that he may not be able to continue his notorious and objectionable activities."

6. It appears that the contention raised by the learned counsel for the petitioner is squarely covered by the aforesaid judgment which has been established from the show cause notice at page-35, Item No.2 that while issuing show cause notice for the offence which has been registered with the Vallabhipur Police Station as C.R.No.II-28/99 under the provisions of Sections 4 and 5 of the Prevention of Gambling Act, it has been clearly mentioned the ground of detention which cannot be said to be punishable under Chapter XII, XVI and XVII of the Indian Penal Code. It is the case of non-application of mind on the part of the authority. As far as point No.2 is concerned, it has been squarely covered by the aforesaid judgment more particularly para-8, which reads as under :-

" Another non-application of mind in the show-cause notice is exposed from the concluding portion where the externing authority has mentioned that the petitioner should be externed from districts of Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Vadodara. No reason has been given in the show-cause notice why externment from these districts was proposed when the activities of the petitioner were confined only to the district of Ahmedabad Rural.

The externing authority under S.56 of the Bombay Police Act has power to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the districts contiguous to his own district. The criteria for passing such an order is provided for in S.56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order. The case of Vrajlal Mohanlal v. District Magistrate, Rajkot and another reported in 3 G.L.R. 807 can

be referred on the point."

7. It is reflected from the order that no reasons have been given in the show cause notice as to why petitioner has been externed from the districts shown in the show cause notice when the activities of the petitioner was confined only to Bhavnagar District more particularly in Vallabhipur Taluka only and not to the adjoining districts of Bhavnagar, Rajkot, Amreli, Junagadh, Surendranagar and Ahmedabad. As petitioner succeeds on these grounds, she has not pressed other grounds.

8. For the reasons given hereinabove, this application is allowed. The impugned order of externment on 20.10.2001 passed by Sub-Divisional Magistrate, Bhavnagar and confirmed by the Appellate Authority on 5.1.2002 are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.

(R.P.Dholakia,J.)

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